May 21, 1931
10c a Copy

Volume 6, Number 9
$1 Per Year

THE LOS ANGELES BAR ASSOCIATION

BULLETIN

Official Publication of the Los Angeles Bar Association, Los Angeles, California

DR. ROBERT A. MILLIKAN WILL SPEAK
AT THE MAY MEETING
See Notice on Page 276

Printed by PARKER, STONE & BAIRD COMPANY
Law Printers and Engravers
241 East Fourth Street Los Angeles, California

Advisory Minimum Fee Schedule

LONG BEACH BAR ASSOCIATION MEMBERS ADOPT ADVISORY RATES FOR LEGAL WORK. EXPERIMENT OF WIDE INTEREST TO LAWYERS

Every attorney in Los Angeles County will be interested in the advisory minimum fee schedule which has just been adopted by the Long Beach Bar Association. This Association, with 136 members, comprises the largest group of lawyers in the county outside of the Los Angeles Bar Association, and the document will no doubt be read and discussed by lawyers throughout the state with interest. *The Bulletin* here presents the schedule to its readers.

Consultation in office	$ 3.00
Consultation elsewhere	5.00
Drawing and directing execution of will (simplest form)	10.00
Drawing and directing execution of will containing any provision creating a trust or life estate	25.00
Preparation of mechanic's lien	5.00
Release of mechanic's lien	5.00
Property Settlement Agreement	50.00
Separation Agreement	25.00

CORPORATION PRACTICE

Articles of incorporation and preparation of By-Laws	150.00
Application to Corporation Commissioner	100.00
Amending Articles of Incorporation	75.00
Changing name of Corporation	100.00

SUPERIOR COURT

(CIVIL—Exclusive of Probate and Similar Matters)

For preparing any complaint, petition or instituting any proceeding in the Superior Court. Not less than	75.00
For preparing Answer to any complaint, petition or proceeding in the Superior Court	50.00
For appearing in the Superior Court on any demurrer, motion, citation or contested matter. Not less than	50.00
For the trial of any matter requiring more than a one-half session and not more than a one day session. Not less than	100.00
For each succeeding day of trial. Not less than	75.00

For the prosecution of any action in the Superior Court, which is solely and purely a collection matter, involves no other issue and seeks no other relief.

Not less than 20% on the first $2000.00 and 10% on the excess.

For the collection of any note, for the foreclosure of any mortgage or for the collection of any sum where the contract provides attorney's fees.

Not less than the fee hereinbefore provided in collection matters and in no instance less than the full fee allowed by court rules.

CRIMINAL

For arraignment and plea. (This does not include services rendered in connection with probation.) Not less than	100.00
First day of trial. Not less than	100.00
For each succeeding day of trial. Not less than	100.00
For appearance on probation. (This does not include services in connection with arraignment or plea.) Not less than	50.00

(Continued on Page 294)

Los Angeles Bar Association Bulletin

VOL. 6 MAY 21, 1931 No. 9

Official Publication of the Los Angeles Bar Association. Published the third Thursday of each month. Entered as second class matter August 8, 1930, at the Postoffice at Los Angeles, Calif., under the Act of March 3, 1879.

Editorial

In Los Angeles County there are approximately 5,000 licensed attorneys, 4,300 of whom, approximately, are in the city. The Los Angeles Bar Association membership numbers 2,392, and the aggregate number of memberships in the ten other Bar Associations in the county is 454. Included in the membership of the Los Angeles Bar Association, are 263 attorneys who also are members of some one of the other Associations. All of the Bar Associations of the county are affiliated.

There are, therefore, 2,846 attorneys enrolled on the membership lists of the eleven affiliated Bar Associations in the county, collectively comprising the largest single group of lawyers, with two exceptions, in the United States. It will thus appear that about 45 percent of the attorneys residing in the county and presumably engaged in practice either in Los Angeles or one of the cities outside of Los Angeles, are not members of any Bar Association.

It is fair to assume that all of these men and women are interested in the welfare and problems of the profession as a whole, and particularly in furthering the expressed purposes of the organizations whose memberships make up more than 55 percent of the attorneys of the county. These purposes are declared in their constitutions and by-laws to be:

> "To advance the science of jurisprudence, to promote the administration of justice, to encourage a thorough legal education, to maintain the honor and dignity of the profession and to cultivate social intercourse among its members."

There is, therefore, every reason for the great number of attorneys now unaffiliated with any of the several Bar Associations to join with their fellow members of the bar who are endeavoring to carry out the paramount duty of the profession to the public, namely: to maintain the honor and dignity of the legal profession, and to promote the administration of justice.

No attorney who permits himself calmly to analyze the situation of the legal profession as a whole with relation to public opinion and the law, will deny that there is urgent necessity for the Bar—a united Bar—in every community to recognize the problems that confront it, and unitedly to do what it can to solve them. It would be absurd to question the ability of the lawyers to solve their own problems. To do so would be confession of lack of ability, as lawyers, to solve other people's problems.

Reform, however, and the restoration of the legal profession to the high position it once held—and may hold again if the lawyers do their duty to their profession—can only come about through an awakened and united bar.

The Initiation of Criminal Prosecutions by Indictment or Information

DIGEST OF SURVEY MADE OF REPRESENTATIVE STATES, INCLUDING CALIFORNIA

Professor Raymond Moley, of Columbia University recently made an exhaustive survey of the subject under the above title, which has just been published by the *Michigan Law Review*. Aside from the general interest, the subject has a very special local interest because of the fact that Professor Moley has selected California, and particularly Los Angeles, as one of the states and cities upon whose record he proves his case in favor of the "Information" method.

After showing that the American Law Institute has proposed a change in criminal procedure so that "all offenses heretofore required to be prosecuted by indictment may be prosecuted either by indictment or information," the Professor states that in 24 states prosecution of practically all cases may now be by information, and that in many of the states in which the indictment is still required there has been a distinct agitation for the change.

For the purpose of comparison, the author selected data regarding a large number of criminal prosecutions for major offenses in California, Indiana, Michigan, and Connecticut. These were the states using the information which were selected as typical. Of the states requiring the indictment he chose New York, Illinois, Pennsylvania, and Virginia. The method followed in gathering the data from these two groups was, he says, the same.

In gathering data in California, Indiana, and Michigan a special effort was made, observes the Professor, to balance the cases between the large cities on the one hand and the remainder of the state on the other. Thus in California, 1165 cases were included for Los Angeles, and 1105 for the remainder of the state. The study in California, Indiana, Michigan and Connecticut concentrated on cases originating in the courts in 1928. In the "indictment" states the data was taken from crime surveys published in 1928 and 1929. An elaborate questionnaire was sent to 2694 trial judges throughout the United States, 545 of whom furnished the information requested. In addition the cooperation of 162 prosecutors was secured.

California Statistics

In commenting upon the California data, Professor Moley says:

"Also in many pertinent factors of the subject matter under consideration vastly perplexing human values are involved. A significant example of this is the fact that for several years Los Angeles and San Francisco have differed in a quite marked way in the proportion of cases in which guilt is established by plea and after trial. Legally prescribed procedure is identical, of course, and general administrative methods are not dissimilar. The difference is explained by experienced observers as pertaining to the efficiency of those in charge of the office. This can scarcely be subjected to nicely measured analysis, but it may weigh heavily in the scale."

Relative Use of Information Method

Quoting from the article:

"It has been conclusively demonstrated that when prosecutors have the option of submitting cases to a grand jury or issuing an information on their own initiative they do the latter in an overwhelming proportion of cases. In the Missouri Survey it is shown that of 4,969 cases initiated by information and indictment only 575 or twelve per cent were by indictment. It seems to be the practice to pass to the grand jury some cases in which an important public interest is involved and in which the prosecutor wants to show complete impartiality. Frequently, also, he permits the grand jury to assume responsibility in certain very doubtful cases.

"In the study here presented we found that in California, Iowa, Michigan, and Connecticut a very small number of cases were initiated by indictment, the average ranging from six to ten per cent. In Indiana the use of the grand jury indictment was still quite considerable, possibly on account of the fact that the new system had been

in operation only a year, and possibly because the system of initiating prosecutions is by affidavit rather than information. The proportion of cases initiated by indictment in Indiana was thirty-two per cent."

Independence of the Grand Jury

"In much of the current discussion of the grand jury and the indictment," says the author, "it is asserted that the grand jury really has little independent power of initation or action, that the prosecutor really dominates its actions to the extent that it has become a mere 'rubber stamp' for him. It is pointed out, moreover, that the grand jury provides a means by which he can avoid the public responsibility for actions which he really dominates."

He then proceeds to show that in the 24 states requiring indictment in major crimes, of the 7414 cases reported, only 353, or five per cent, were initiated by the grand jury. "This not only demonstrates that the prosecutor largely determines what comes before the grand jury, but that the public has come to regard him as the logical and proper person to whom to make complaints, rather than as the ancient purpose of the grand jury had it, to the 'grand inquest' of the county," says Professor Moley.

Statistical Results of Survey

The results obtained by the survey is reduced to tables of ratios showing the data for information states contrasted with the data on non-information states and also data of certain cities using each of the systems. Table I shows the extent of "successful prosecutions" among all the cases abstracted in the various states in the studies made.

TABLE I

Proportion of Cases Resulting in "Successful" Prosecutions (by States)

		Informations or Indictments Returned	Cases Resulting in Establishing of Guilt	Ratios
Information States				
California	1928	2,106	1,562	74
Indiana	1928	1,853	925	50
Michigan	1928	2,811	1,961	70
Iowa	1928	1,696	1,072	63
Connecticut	1928	986	780	79
			Average of Ratios	67
Non-Information States				
Illinois	1926	7,438	3,461	46
Pennsylvania	1926	17,273	9,261	54
Virginia	1927	1,136	646	57
New York	1926	4,460	2,195	49
			Average of Ratios	52

TABLE II

Proportion of Cases Resulting in "Successful" Prosecutions (Non-Metropolitan Areas)

	Informations or Indictments Returned	Cases Resulting in Establishing of Guilt	Ratios
Information States			
California (excepting Los Angeles)	989	719	73
Indiana (excepting Indianapolis)	989	457	46
Michigan (excepting Detroit)	1,233	1,020	83
		Average of Ratios	67
Indictment States			
Illinois (excepting Chicago)	2,456	1,012	41
Pennsylvania (excepting Philadelphia)	12,483	6,640	53
New York (excepting New York City)	1,938	1,307	67
		Average of Ratios	54

"We use the term non-metropolitan to cover all cases in the state not included in the major cities included in Table III."

Los Angeles Makes Excellent Showing

The next table shows the proportion of cases resulting in "successful" prosecutions in large cities. It is interesting to note that of the six large cities included in the survey, Los Angeles shows the highest ratio.

TABLE III

Proportion of Cases Resulting in "Successful" Prosecutions (Large Cities)

	Informations or Indictments Returned	Cases Resulting in Establishing of Guilt	Ratios
Information Cities			
Los Angeles	1,117	843	75
Indianapolis	864	468	54
Detroit	1,578	941	60
		Average of Ratios	63
Indictment Cities			
Chicago	4,982	2,449	49
Philadelphia	4,790	2,621	55
New York	2,522	888	35
		Average of Ratios	48

Various other tables are shown, too many to permit of reproduction within our space, but those printed here will suffice to illustrate the extent and care of the survey.

The Conclusion

The author then concludes the statement of his exhaustive study as follows:

"The purpose of this study was to gather evidence, not to draw conclusions. The foregoing data constitute a portion of the significant information upon which comparisons may be made between two methods of initiating prosecutions. They are presented in no sense as an argument for the information. There are, as we have pointed out, so many values involved that each person must be his own judge as to the value of each. It will be expected, however, that the person who compiled the data would express conclusions and it is arguable that such an expectation is justified. Therefore, the writer sets forth the following opinions based upon the discussion and data in the foregoing article, and directed to the objectives expressed in the plans for the study.

The method of prosecution by information, as an alternative to that of prosecution by indictment only has the merits:

1. That undoubtedly it is cheaper;
2. That, with the restrictions and reservations we have expressed in the foregoing article, it is more efficient;
3. That it undoubtedly saves time;
4. That, finally, it properly centers responsibility upon the prosecutor for actions which are apparently largely under his control even when indictments only are used. He seems to dominate the grand jury to such a degree that its actions are in reality his own, and for that reason they should be his nominally as well as actually."

NEW LAWS

Commencing in the June number, The Bulletin will print special articles on the new laws enacted by the legislature. These will include analyses of the changes in the Corporation laws, the Corporate Securities Act, Probate Procedure, Building and Loan Associations, the new enactments affecting the Practice of the Law, and other important laws. It will be the endeavor of The Bulletin to have these articles written by Los Angeles attorneys especially qualified to discuss the several subjects.

Bar Association's Work for More Judges

ACTIVE EFFORTS CARRIED ON AT SACRAMENTO. PRESIDENT'S LETTER TO MEMBERS GIVES ACCOUNT OF THE PROGRESS OF THE LEGISLATION

DEAR FELLOW MEMBERS:

Your Association, through its Board of Trustees, has concerned itself with certain legislation that has been pending in Sacramento. It is not possible to review all of these matters but something may be reported in regard to certain of them that seem to be of more than ordinary importance. First and foremost, we have been particularly interested in seeking to relieve the congestion in the Superior Court of this county and in the Second District of the District Court of Appeal. A committee appointed to investigate found that the Superior Court, despite numerous assignments to it of judges from other counties and the Municipal Court, was eighteen to twenty months behind with no particular prospect of improvement, and that the situation in the Second District was little, if any, better, despite the fact that judges of our Superior Court have been assigned to help in the work of the Second District. Obviously, this was a condition that must be corrected, if possible.

There has been introduced in the legislature a bill to increase by twelve the number of Superior Court judges. This number had been reduced to eight by amendment and when the matter was first brought to our attention it seemed quite likely that the bill would fail of passage. There was also pending a bill to add a division to the Second District. Judge Leslie Hewitt and Mr. Kemper Campbell went to Sacramento as the representatives of the Association. They met with the Director of Finance and found him definitely opposed to the increase in the number of Superior Court judges. They argued the point with him at length but apparently without making much impression. It was quite apparent that reinforcements were needed. Accordingly Chief Justice Waste was contacted and agreed to lend his assistance. The following week Hewitt and Campbell, together with the writer, returned to Sacramento and, having been joined by the Chief Justice and Judge John Shenk, renewed the discussion with the Director of Finance. At the conclusion of a three hour session the Director of Finance had agreed that he would approve a bill for twelve additional judges of the Superior Court and the addition of a division to the Second District.

Chief Justice Assists

The following morning the group of persons just mentioned met with the Finance Committee of the Senate and, after a very earnest discussion by Judge Waste, the Committee indicated its willingness to pass favorably on the bill for the additional judges for the Superior Court.

During this second visit very little had been done by your representatives in regard to the additional division for the Second District, as everyone seemed to think that no opposition to this measure would be met, in view of the favorable attitude of the Director of Finance. Of course, during both visits many contacts were made with members of the Senate and the Assembly for the purpose of advising them as to the importance of both of the bills in question. It should be noted that the Association has had the whole-hearted and earnest cooperation of the Southern California delegation.

Towards the end of last week—that is, about May 1st or May 2nd, reports began to come in from Sacramento that developments had not been favorable to the bills relative to increase in the number of judges and the additional division. Accordingly, on May 4th your representatives were again in Sacramento. On that day the bill for twelve additional judges for the Superior Court was called up in the Senate and passed unanimously. It was then passed to the Ways and Means Committee of the Assembly.

New Appellate Division Bill

About this time we learned that this Ways and Means Committee had tabled the bill for an additional division of the Second District on the representation from certain quarters that no such additional division was needed. On the night of May 4th Judge Waste, Judge Shenk and your representatives appeared before the Ways and Means Committee

and, after discussion and a most earnest argument by the Chief Justice and your representatives, the bill was favorably passed by the Committee.

At this same time an effort was made to get the Ways and Means Committee to take up the bill for an increase in the number of judges of the Superior Court but the pressure of business in the Ways and Means Committee made this impossible. However, discussions with the members of the Los Angeles delegation and with others seemed to indicate that this bill would be brought out from the Committee not later than the following Wednesday and that there was an excellent chance that it would be passed by the Assembly and become law.

Efforts to be Continued

At this writing, May 9th, the bill for an increase in the number of Superior Court judges is not yet out of committee and apparently will not be considered by the committee before the night of May 12th. Your representatives are returning to Sacramento and expect to appear before the Ways and Means Committee when the bill comes up for consideration on May 12th. The delay in bringing the bill out of committee is causing us much concern, as the time for the adjournment of the legislature is near at hand and a tremendous amount of business must be dispatched before adjournment. By the time the Bulletin has been printed the fate of this legislation will have been determined.

While this is being written news has come that the bill for the additional division of the Second District has been passed by the Assembly. It will now have to go to the Senate Finance Committee and, if passed favorably by that committee, will come before the Senate. Here again we have occasion to be concerned because of the short time left to bring the matter to a successful conclusion.

The foregoing represents only a portion of the activities of your representatives and a further report will be made when time and space permits.

Sincerely,
Irving M. Walker,
President of Los Angeles Bar Association.

IMPORTANT NOTICE TO LAWYERS

Dr. Robert A. Millikan will be the speaker at the May meeting of the Los Angeles Bar Association on May 28th, 1931.

His subject is "Education and Employment"

Alexandria Hotel, 6 p. m.

Justice Versus Delay, et al.

FAILURE TO FURNISH PROMPT TRIAL IN CIVIL CASES DISCUSSED. PRO TEM JUDGES ADVOCATED AS A REMEDY. ADDITIONAL JUDGES PROMISED INSUFFICIENT TO REDUCE DELAY. BAR SHOULD ENCOURAGE PRO TEM METHOD IN URGENT CASES

By Robert A. Morton, of the Los Angeles Bar

At the start of what may turn out to be a somewhat critical discourse, and as a gesture of tactical defense, I shall set forth in advance a generality not widely disputed as expressed by our distinguished scholar and friend, Professor William B. Munro, in his article, "Common Law and the Common Welfare" in Atlantic Monthly for April. It is this:

"Forty years ago the most conspicuous failure in the American governmental system was the administration of our large cities. *To-day by common consent it is the administration of the Law.*"

Fortunately, my task is restricted to the conspicuous failure of the law in this County to furnish prompt trial dates in civil actions and the consequences thereof, and to the efforts of our industrious Secretary of the Superior Court to provide volunteer pro tem judges for the immediate hearing of urgent causes.

It is not news that an action at law in the County of Los Angeles is in the nature of a legal marathon, in the course whereof the personal affairs of the parties, witnesses, and attorneys have a fair chance of passing into Chancery in advance of a trial date; and that too frequently an exhausted litigant and his disorganized case reaches the courtroom only to encounter an harassed judge who feels himself obliged to jog things along, with the result that an incomplete record may remain to be passed on to a higher court.

If justice delayed is justice frustrated then by common report our County justice is in a sorry way, with numberless plaintiffs and possibly fewer defendants confronting costly uncertainty if not direct financial loss in their personal and business affairs. Lawyers are familiar with the vices, both inherent and calculated, that arise from trial dates too long delayed. It can safely be said that some lawyers are more familiar with such aspects than others. Further, it can be ventured that no little litigation is born for the principal reason that early hearings are not available to defendants; and that many worthy causes must suffer without redress when the cost of waiting outside the courtroom is prohibitive. Heavy financial loss must befall any community where for many practical purposes the courts are closed to its citizens, and such losses are out of all proportion to the nominal cost of maintaining a few needed courtrooms.

A Striking Example

For example, the proceedings for the opening and widening of Flower Street in Los Angeles required four years of obstructive litigation that should have been concluded in six months, and this despite the fact that such proceedings are supposed to have right of way in all courts. The delay in settling the trivial matters involved in that case is said to have cost the merchants on South Flower Street and the waiting property owners in excess of one million dollars in lost rentals, interest charges and taxes. Similar instances could be multiplied indefinitely.

It is recorded that in the year 1590 or thereabouts, a minister of Henry the Fourth of France observed in a report to his monarch the following sentiments which I cite with all due reservations:

"As it seems to me, sir, all these goings, comings, writings, letters, journeys, interventions, parleys and conferences cannot be better compared than to that swarming of attorneys at the courts, who take a thousand turns and walks about the great hall, under pretence of settling cases, and all the while it is they who gave them birth, and would be very sorry for one to die off." (Guizot, History of France, Vol. 5, p. 39.)

In the viewpoint of the layman, and he is a practical fellow, such delay at law is a reproach to the Bar. If we defensively point to the legislature we can be reminded that the members of the legislature are two-thirds lawyers. Although for

a number of years our Superior Court calendar has lost ground, no determined effort was made by the Bar until recent months to obtain needed increases in personnel. It is small wonder that in a day of efficient business operation, communication and transportation the layman resents the news that his note will require two years for legal collection, that the matter of the death or injury of his child by some agency will only eventually go to trial, or that his or her marital tragedy with its paralyzing effects upon the welfare of children and one's business and personal fortunes must gather dust in the court archives if the suit be contested. He knows that primarily the Bar is to blame, and he suspects that the legal fraternity delight in and profit by justice delayed.

Additional Judges Promised

It is reported that we are to have six additional Superior Court judges, and these by the fortunes of appointment may be persons of judicial fitness. However, six new courtrooms will barely permit the calendar to hold its own, particularly in view of the summer vacation period close at hand. Recently numerous judges who were appointed or elected to the Municipal Bench have been transferred to the Superior Court, while the Municipal Court, fresh with its extended jurisdiction and added responsibilities, is recruited from the township magistracy of the more or less rural districts.

With the like aim of expediting hearings at any cost except the cost of additional judgeships, numerous remedies now struggling to be heard in Sacramento are said to have the valuable property of disposing of two law suits where formerly only one was extinguished. However well-intended many of these nostrums may be, I presume to feel after surveying a few of them that their enactment would add useless and intolerable complications and burdens in procedure. One proposal for example appears to provide for trial and judgment principally by affidavits; while another seems to require a clear-as-crystal prior disclosure of everything connected with the case except the private lives of the attorneys, which indeed might be included under a liberal construction of the proposed act. Personally, I am so conservative as to believe that given the necessary courtrooms and judges of fair judicial fitness, our existing procedure will do the work without resort to major surgery.

Why are Judges Pro Tem Not Sought?

Some weeks ago the Secretary of the Superior Court, to whom all things are made known, including complaints relative to the recalcitrant trial calendar, contrived to obtain the consent of about fifty lawyers to the posting of their names on a pro tem list of volunteer judges who stand ready at convenient times to hear causes presented. On the list are ex-judges and lawyers of ability in the profession. The list has met with surprising neglect when it is considered that the advantages of the pro tem method in certain types of cases must suggest themselves to lawyers familiar with conditions in and about our Courts at this time.

The procedure of obtaining a trial pro tem is simple. Respective counsel agree upon a judge and stipulate that he may try the case, as provided by Article VI, Section 8 of the State Constitution. The lawyer-judge is approved by the Presiding Judge and sworn in as a Judge pro tempore of the Superior Court. From that moment he is confirmed in all the powers of such judge relating to the trial of the cause until final determination. After judgment he hears all motions, settles bill of exceptions, if any, and functions generally as do all Judges. Divorce cases cannot be tried by a pro tem judge by a ruling of the Judges of the Superior Court.

Not the least attractive feature of the pro tem list is the opportunity to select your own judge; such reflection, perhaps, opens up too many avenues for contemplation. Nevertheless, any lawyer awaiting his turn in a master calendar department has some chance of failing to obtain one of the many incumbents whose ability, discernment, and courtesy are an honor to the Bench. A lawyer-judge cannot have lost virile contact with his fellowmen; he is put on his metal by the very fact of his choice, and problems that arise in his courtroom are certain to receive alert and sympathetic consideration. Necessarily the psychology of the pro tem courtroom is founded on a friendly desire to assist, and an impartial, thorough hearing is assured.

Lawyers Must Solve Problems of Delay

Indeed, the Bar can here refute one of the charges aimed at it. As social growth inevitably draws the citizen and the law in closer contact, something more will be demanded of the legal fraternity than what has heretofore been accomplished by the average Bar Association. If institutions of law are conservative and rightly so, nevertheless, in matters of procedure we cannot, to use a homely phrase, remain asleep at the switch in a fast express era. The citizen will look askance at, as he will deploy against, any organization that appears to be responsible for the denial of the legal rights which are his heritage, just as in time he will learn how to handle the problem of the unfit Judge. The ancient Greeks had a way in such matters.

If the writer has strayed too far from the main context he must apologize, as did that certain state senator to his constituents, who, having introduced an innocent bill to pension lady war veterans, shortly found himself the father of a law by virtue of amendments by his more ambitious colleagues which provided for a state income tax, placed state janitors under civil service, and doubled the registration fee on automobiles.

I would like to see the Bar encourage the pro tem method for urgent causes. Few active lawyers in the County could not, if they so desired, select in their files one or more cases suitable for pro tem submission, and none would be unable to find on the list of pro tem Judges a lawyer of ability to act. A little such encouragement will give this pro tem court and the Bar an opportunity to show what it can do in the line of public service.

And this not as a mere temporary expedient; for there are no indications that reasonably prompt civil trials can otherwise be had in the near future.

Lawyers Volunteer to Act as Judges of the Superior Court

LIST OF THOSE AVAILABLE FOR SERVICE IF EARLY TRIAL IS DESIRED

H. B. Blakeley, Secretary of the Superior Court, Los Angeles, has furnished the Los Angeles Bar Association a list of attorneys who are willing to act as Judge pro tem of the Superior Court. In order to premit a judge pro tem to act it is necessary that a stipulation be entered into in each case between the attorneys representing the parties to the action, naming the judge pro tem, and the judge so selected must be approved by the Presiding Judge, an immediate trial can then be had if there is a court room vacant. A divorce action cannot be tried before a pro tem judge. Many of those who have volunteered their services are willing to serve without compensation; others require pay, ranging from $25.00 to $100.00 per day. THE BULLETIN prints below the names, addresses and telephone numbers of those who have volunteered.

NAME	ADDRESS	PHONE
Acret, George	408 Pershing Sq. Bldg.	FA-3436
Adams, Francis D.	856 Roosevelt Bldg.	MU-6201
Allen, W. S.	709 Allied Crafts Bldg.	WE-0427
Auslender, Edward M.	Security Title Ins. Bldg.	TR-8904
Barrett, Elliott H.	703 California Bldg.	MU-5713
Beaulieu, L. V.	501 Com. Exchange Bldg.	TR-5326
Betty, Marion P.	301 Chester Williams Bldg.	MU-5262
Bull, Franklin P.	700 H. W. Hellman Bldg.	MU-7927
Cable, C. F.	747 S. Hill Street	TU-2161
Dickson, Hugh	Washington Building	MU-2692
Flint, Walker R.	815 Financial Center Bldg.	TR-0654
Grant, G. M.	129 West Second Street	MU-5123
Hall, Mark A.	615 Walter P. Story Bldg.	GL-6555
Hanby, J. Walter	600 Black Building	FA-1946
Hardy, Carlos S.	924 Security Title Ins. Bldg.	TR-1244
Hazlett, William	918 Security Bldg.	MI-2296
Hinshaw, Howard R.	613 Ins. Exchange Bldg.	TR-2902
Janes, E. S.	201 N. El Molino Ave., Pasadena	Pasa. Wakefield 6955
Kochman, Ben M.	811 Chester Wms. Bldg.	MU-8878
Leonard, J. P.	902 Broadway Arcade Bldg.	TU-7668
Lewis, Benjamin	1130 Bank of Italy Bldg.	TR-7165
Loewenthal, Paul	1006 Union Bank Bldg.	VA-3175
Luter, John W.	215 West 7th Street	TR-0893
Marks, Albert E.	843 Rowan Bldg.	TU-4654
McDill, George	Wilcox Building	VA-9851
McKelvey, Charles S.	306 South Broadway	VA-8854
Mellen, John	639 South Spring Street	TU-3968
Morley, Clarence J.	Security Title Ins. Bldg.	TR-8904
Murphy, Clyde F.	600 James Oviatt Bldg.	TU-3217
Noon, Ernest E.	1st National Bk. Bldg., Beverly Hills	OX-5001
Nuzum, Harold N.	916 C. C. Chapman Bldg.	TU-1236
Oster, Frank F.	530 West 6th Street	TR-1244
Pendergast, Lyle	622 Stock Exch. Bldg.	VA-9484
Ricca, Vetran	705 American Bank Bldg.	MU-3918
Reiche, Charles F.	712 Rowan Bldg.	FA-1973

(Continued on Page 284)

Master Calendar System of Municipal Court

FOR THE HANDLING OF CRIMINAL CASES. AN INTERESTING AND INSTRUCTIVE ANALYSIS OF METHODS USED TO DISPATCH THE BUSINESS OF A BUSY COURT

By Wilbur C. Curtis, Judge of Los Angeles Municipal Court

After serving nearly one and a half years in the Criminal Master Calendar Division of the Los Angeles Municipal Court, I submit the following conclusions concerning the Master Calendar System and the administration of criminal justice:

The purpose of the Master Calendar System is two-fold.

First: To expedite the handling of business, and,

Second: To prevent "fixing" and protect the trial judges from improper outside influences.

The first purpose unquestionably has been accomplished with the highest degree of efficiency. All proceedings preliminary to the actual trial of a case are disposed of in the Master Division. These matters include arraignment, plea, sentence (if the plea is guilty), demurrers, and all motions, including those for continuance.

Each morning at 9:30 a.m. the trial calendar is called and cases actually ready for trial are assigned by the judge to appropriate trial divisions for immediate trial. Enough divisions are held open each day so that all criminal cases can be disposed of without delay. If the number of cases ready for trial are not sufficient to occupy all of the divisions upon which the Master Court has first call, the day's business is concentrated in fewer courts, and the remainder released prior to 10:00 a.m. for such civil business as may be transferred from any congested Civil Division.

No "Trailing" Here

There is practically no "trailing" or holding over from day to day for trial. The trial courts have no calendars of their own and are not supposed to continue any case to a future date. If a case requires more than one day for trial, or if the trial division has received more cases than it can dispose of in one day, the clerk will advise the Master Court of this fact and no additional cases will be transferred to the congested court until it has disposed of the business on hand. Through this system of equalizing the work, the criminal business is disposed of with the least possible number of courts and with the greatest efficiency. The assignment of business is made with due regard to the nature of the case, convenience of witnesses and the qualifications of the trial judge to handle it. If any one of the trial judges, by reason of experience or study, is more familiar with a particular type of case than are the other judges, it will be sent to his court whenever practicable.

There are numerous other advantages from the standpoint of efficiency. For instance, trials are not interrupted for the hearing of motions or ex-parte matters, nor are attorneys compelled to wait for the hearing of such proceedings. They may be heard almost immediately upon request, in the Master Division at any time.

No time is wasted in Division 8, the Master Court. Here more than on hundred arraignments, pleas and motions are heard every day. Practically all warrants of arrest and search are issued by the judge in this department and its clerk attends to the issuance of all subpoenas. It is the administrative center of criminal business.

Uniformity of Judicial Policy

This plan permits the establishment and carrying out of a uniformity of judicial policy, which would otherwise be impossible.

While presiding in this court, I made it a practice to impose generally smaller fines and sentences than the trial courts, with the object of encouraging pleas of guilty and thereby saving the County the expense of trials. This policy is judiciously sound on the theory that the element of honesty shown by the guilty plea merits some consideration as to penalty.

This does not mean that there is any "trading" for pleas, or that defendants

may ascertain in advance of a guilty plea what the sentence will be, but merely that the defendant by reason of the uniform action of the court in similar cases may expect a lesser sentence than that commonly imposed after trial and conviction.

This brings us to a consideration of the second purpose of the system, which, to the mind of the writer, is of far greater importance than the other.

No Improper Influences Possible

It is obvious that if the defendant and counsel do not know which judge is going to try the case until the day of trial, no improper influence can be brought to bear on the trial judge.

Whatever lack of respect for courts and judges now exists is due primarily to the belief that judges can be either "fixed" or at least affected in their decision by outside influences. This impression has become so general that the first thing a defendant thinks of when he gets into trouble is to find some friend or acquaintance who knows the judge and who will go and talk to him about the case.

Even a majority of the lawyers seem to be unfamiliar with the fact that it is a crime to discuss a criminal case privately with a judge prior to the imposition of sentence.

Lawyers Take Notice

Section 166 of the Penal Code provides in substance that it is a misdemeanor punishable by a $500.00 fine or six months in jail, or both, to present to a judge any representation either oral or in writing intended to be either in mitigation or aggravation of the sentence to be imposed, unless the same is presented as provided in the code, which of course means in open court as a part of a regular proceeding then pending before it, and in which both sides have an opportunity to be heard.

While the Master Calendar system does protect the trial judges from the worry and embarrassment of political pressure, it certainly provides no bed of roses for the judge who administers it. If he does not wish to have his telephone changed to an unlisted number, his sleep will be broken from four to eight times every night by phone calls regarding cases. Some will be anonymous threats or criticisms, and others perhaps well-meant pleas for mercy.

In the opinion of the writer, the success or failure of the Master Calendar plan depends on the physical and moral strength of the judge in charge of it. Handling this great volume of business, which includes the sentencing of approximately fifty defendants each day after hearing their stories of misfortune and human woe, is itself a physical and mental strain. But far harder than this is the necessary effort to repel the continuous deluge of improper influences.

After but short experience in this court, the writer reached the conclusion that the only safe and possible course to follow was, as a matter of policy, to refuse to discuss cases in private. No less than a dozen times a day there were insistent knocks upon the door to chambers, but these people could not get in without going through the court room and first giving their names and the purpose of their visits to the clerk who advised them that the judge would not discuss a case in chambers but would hear any proper statement in open court.

(Continued from Page 281)

Rubin, David R.	704 South Spring St.	TU-3136
Satterwhite, John W.	Lankershim Bldg.	TU-7327
Schreider, William	501 Western Mutual Life Bldg.,	VA-5452
Sisk, Floyd S.	111 East Broadway, Glendale	DOuglas 604
Sprague, Walter H.	C. C. Chapman Bldg.	MU-1359
Stahl, C. W.	321 West Third Street	MA-1466
Stephenson, Dwight W.	1227 Citz. Nat'l. Bank Bldg.	MA-1494
Summers, Charles	6778 Hollywood Blvd.	GR-2888
Thomas, William H.	3875 Wilshire Blvd.	MU-9454
Tuttle, George W.	639 South Spring Street	TU-3968
Wapner, Joseph M.	923 Rowan Building	TR-0311
Wilson, Leonard	617 South Olive Street	FA-3444
Wolfman, Morris	Pershing Square Bldg.	TU-4550
Young, Hugh Martin	Washington Bldg.	MU-4381

Corporate Practice of the Law

NEW ORLEANS BAR ASSOCIATION AND NEW ORLEANS CLEARING HOUSE ADOPT RULES AND PRACTICES RESPECTING OPERATIONS OF TRUST DEPARTMENTS OF BANKS. AMICABLE SOLUTION OF UNAUTHORIZED PRACTICE REACHED

The Executive Committee of the New Orleans Bar Association, eighteen months ago, adopted in the form of a resolution, rules and practices in respect of the operations of trust departments of member banks of the New Orleans Clearing House Association. These were submitted to the Clearing House Association, which has, by a resolution recently adopted, concurred therein. These rules have been furnished THE BULLETIN and are printed below.

"The New Orleans Bar Association," says the Secretary, "after many conferences with the banks and trust companies, comprising the New Orleans Clearing House Association, has entered into an agreement with the banks, prescribing rules and practices for the operation of their trust departments, in an endeavor to prevent the banks, through their trust departments, from practicing law."

Following is the Resolution of the Bar Association, adopted and concurred in by the New Orleans Clearing House Association:

RESOLVED: The New Orleans Bar Association, recognizing the mutual benefits of harmonious cooperation of the banks and bar in this City, recommends to the banks, acting through the New Orleans Clearing House Association, the adoption of and faithful adherence to the following rules and practices in respect of the operations of the Trust Departments of said banks:

FIRST: Under no circumstances

(a) Shall a bank advertise that it will, in respect of any legal matter, give, or in fact give, through its officers, agents or attorneys, any advice or opinion, or invite or promote consultation with its officers, agents or attorneys to that end by any person, firm or corporation;

(b) Shall a bank advertise that it will furnish, or in fact furnish, opinions or advice of its officers, agents or attorneys as to the interpretation, scope, effect or legality of any law or court decision or legal document;

(c) Shall a bank advertise that through the services of its officers, agents or attorneys it will draft or prepare, or assist in the drafting or preparation, or in fact draft, prepare or assist in the drafting or preparation of any will, contract or other legal document;

(d) Shall a bank publish or distribute for general circulation and information of the public, forms of wills, trust agreements, contracts or other legal documents;

(e) Shall a bank, by advertisement or otherwise, solicit, or request or suggest the employment or retainer of the attorney of the bank in any such matters;

(f) Shall a bank extend, by advertisement or otherwise, an invitation to the public to bring its legal problems to the bank.

EXCEPT THAT:

(1) A bank may advertise that upon application it will furnish, and may furnish to prospective customers copies of trust agreements, deeds or other legal documents or opinions of its counsel relating to bonds or securities offered by it or purchasable through it; and may freely furnish to licensed attorneys-at-law copies or drafts of trust agreements, deeds, wills and other legal documents which may be of assistance to them in the preparation of similar documents, and cooperate through its officers, agents and attorneys in every respect with attorneys-at-law in rela-

tion to any matters coming within the scope of its Trust Department;

(2) A bank may undertake to have, and may have its attorneys, at its own expense (which expense may be reimbursed to it), pass upon or express an opinion as to the legality, or as to the provisions of any existing legal document to which it is, or to which it is requested to become a party; or in which it has or may have interest.

(3) A bank may, if so requested, but without solicitation or suggestion on its part, recommend its counsel to any person, firm or corporation desiring legal advice or service, but in the event the attorney of the bank is retained for such services, he shall be entitled to compensation by such person, and must charge for such services in accordance with custom or the rules of the New Orleans Bar Association if such attorney is a member of said Association.

(4) A bank or trust company may bring to the attention of the public by any form of advertising, including the issuance of booklets, circulars or personal letters, that it is legally authorized to act in any capacity permitted by law. Such advertising may stress the advantage of making wills, creating trust estates, appointing trustees, executors, curators, etc., trusteeing of life insurance under trust agreements, the creating of living trusts, etc., and may, in seeking its apointment in any permitted capacity, stress its particular resources, such as its capital stock and surplus, its large organization and its experience resulting from its many years of operation. While it may in such advertising matter print resumes or digests of laws or jurisprudence, it should always clearly recognize therein the line of demarcation which separates the practice of law from the pursuit of an employment in a fiduciary capacity, and should avoid the expression of any opinion as to the legality, scope, application or interpretation of such laws or decisions.

SECOND: No prohibition herein contained shall apply to loans, bond issues or similar transactions, when the bank has a pecuniary interest other than that solely of a fiduciary interest.

THIRD: If any bank shall be in doubt as to the legality of any action or proposed action on its part in relation to the conduct of its trust business, it shall be at liberty to submit, through its officers or attorneys, the question to the Executive Committee of the New Orleans Bar Association, to the end that the judgment of that Committee may be had upon the matter.

Resolution Adopted by New Orleans Clearing House Association

The New Orleans Clearing House Association having now heard from every Member Bank that it has concurred in the resolution of the New Orleans Bar Association, dated October 31, 1929:

IT IS NOW RESOLVED that the President of the New Orleans Clearing House Association be and he is hereby authorized to notify the President and Officers of the New Orleans Bar Association that all the Member Banks now in the New Orleans Clearing House Association have concurred in said resolution and have agreed to abide by the same.

INCREASE IN LITIGATION

The first report of the Judicial Council of New Jersey organized in 1930, showed that there had been an increase in litigation since 1900 amounting to 980 percent in the County courts and 897 percent in the District Courts. The Council regarded the situation as constituting a critical problem.

"Children" Does Not Mean Adopted Children

CONSTRUCTION OF WILL INVOLVING MEANING OF WORD "CHILDREN." INTERESTING QUESTION RAISED. NO CALIFORNIA CASE ON SUBJECT

By Walter Eden, of the Los Angeles Bar

I have recently been called upon to advise a client in a matter arising in the State of Illinois, my native state, and where I practiced law several years before coming to California, involving the construction of a will. The question to be determined is the meaning of the word "children," where adopted children are concerned. In Illinois the law provides no decree of distribution such as we have here, to take the place of the will. Therefore, questions of construction of wills frequently arise many years after the death of the testator.

In the case referred to a son of a testator, who had no children, adopted a child many years after the death of the testator. The testator, in his will, had given to his son certain land for life, with remainder to "his children," and in case he left no children the property was to go back to testator's estate. The son died childless except as to the adopted child. The question seemed to me to be so interesting that I am submitting this article for THE BULLETIN.

In construing a will it is necessary to search its every part to ascertain the intent of the testator. Precedents have little bearing to aid in its construction, but the will must be looked to, with all the surrounding circumstances at the time it was made, to ascertain the testator's intention.

The construction of a trust frequently calls into play the same legal questions.

Smith vs. Thomas, 317 Ill. 150.

In the great majority of cases arising in the higher courts of the several states, where "children" of some one other than the testator are provided for, it has been decided that the word "children" does not mean adopted children. In such case the word is presumed to have been used in its ordinary sense or primary meaning, unless there be language, in the will, or circumstances surrounding the parties to make it appear that the testator intended to include adopted children. The Supreme Court of Illinois has had a number of cases before it and has invariably so decided. Other courts making similar decisions are: Rhode Island, Connecticut, Iowa, Missouri, Texas, Wisconsin, Michigan and Pennsylvania.

EFFECT OF USE OF WORD "CHILDREN"

Where the testator himself has adopted children, he is presumed to have used the word "children," to apply to adopted children. By the act of adoption he has made them his children. The act of adoption does not apply to nor affect the father of the adopting parent. In fact, many of the states have adopted statutes to the effect that adopted children do not take by inheritance from the ancestor of the adopting parent.

Where a child has already been adopted before the will was made, and the testator gave property to the "children" of such adopting parent, the decisions of the various states are at variance as to the meaning of the word children. A testator, knowing that his own child has an adopted child, may well be presumed to have intended a devise to his child's children to include his adopted child. On the other hand where, in such case, the law prohibits such adopted child from inheriting from the grandfather, such testator may easily have thought that a devise to his son's children would go to his descendants of his own blood.

In numerous cases the construction of such a will depends much on the rights of an adopted child to inherit under the statutes of the state in which the property is situated. In some states it is provided that an adopted child will not inherit from the parent of the adopting parent. Under such a statute the testator is presumed to have considered the law in force at the time of executing his will, in forming his intent. In case of doubt as to the intent of the testator the will should be so construed as will more nearly conform to the statute. But such a statute should not control, for it is only

an aid, in the proper construction of the will.

LIMITATION UPON INHERITANCE

Where the will is made before the adoption, or especially where the adoption was made after the death of the testator, or where the testator is a stranger to the adoption, it is almost universally held that the adopted child will not take under a will of a person other than the adopting parent. This seems to be on the theory that a testator having no knowledge of the adoption, when he executed the will, could have had no intention as to a child thereafter to be adopted. Wildman's Appeal (Conn.) 151 All 265; Puterbaugh's Estate, 261 Pa., 235; Lichter vs. Thiess, 139 Wis. 481; Mitchell's Will, 157 Wis, 327; Casper vs. Helvie, 83 Ind. App. 166; Melek vs. University of Missouri, 213 Mo. App. 572; R. Leask, 197 N. Y. 193; Parker vs. Carpenter, 77 N. H. 453; Cochran vs. Cochran, 43 Tex. Civ. App. 259; Hutchins vs. Browne, 253 Mass, 55; Wyrth vs. Stone, 144 Mass. 441.

Many similar decisions might be cited. It seems that where the adoption was made after the death of the testator, the Courts of the several states have almost universally so decided.

Furthermore, in arriving at the intent of the testator, if by the will the husbands of the daughters, or wives of sons, are barred from taking an interest in his estate, thus showing an intent to confine his bounty to those of his own blood, adopted children will not take.

Wildman's Appeal (Conn.) 151 All 265.

I find no California cases on the subject, and our court when it meets with the subject will doubtless follow the trend of decisions of other states.

How a Pennsylvania Court Cleared Its Calendars

Three years ago, the Common Pleas trial list of Lackawanna County (a county with a metropolitan population of 500,000) of which Scranton is the county seat, was two or more years behind. The Court called upon the Bar Association to provide a remedy. The Bar Association furnished a remedy in the form of a Rule of Court. After two years operation under this rule, the trial list has been brought "completely up to date, and since that time any case can find a place on the next trial list after it is at issue," says W. J. Fitzgerald in the American Bar Association Journal. The rule is stated as follows:

"Fifteen cases shall be assigned to each of the first four days of every trial week. The first ten numbers on each day's list shall be composed of Part 1 cases, and the last five numbers on each day's list, of Part 2 cases. Part 1 cases are those which have not at any time been continued, and those which have been continued only once. Part 2 cases are those which have been continued more than once.

"When making up the list, the priority of the cases according to law, rule of court, special order and number shall be respected and the Part 1 case entitled to first priority shall be Number 1 on Monday's list; the second, Number 1 on Tuesday's list; the third, Number 1 on Wednesday's list; the fifth, Number 2 on Monday's list; the sixth, Number 2 on Tuesday's list, and so on until the first ten cases of each day's list shall be filled. The next five cases on each day's list shall be determined in the same manner. Whenever the Part 1 cases ordered on the list by praecipe or order of court shall not number 40, the deficiency shall be made up from Part 2 cases.

"Unless otherwise ordered, any case not on trial at the close of the day to which it is assigned shall be deemed continued generally.

"The Prothonotary shall keep a record of the number of times that the several cases that appear on the trial lists are continued, but in recording said continuances and making up the trial lists he shall not consider cases which have been continued for the reason that they were not reached for trial, nor shall he consider any continuance that shall have occurred before this Rule goes into effect.

"On petition or on its own motion the court, for special reasons, may transfer a case from Part 2 to Part 1 on such terms and conditions, if any, as it may impose.

"Verdicts, non-suits and judgments may be entered by agreement at any time the court is in session."

Late Interesting Cases on Automobile Insurance

NEW LAW IN CALIFORNIA. NOTICE TO INSURANCE COMPANY. MISCONDUCT OF ATTORNEY IN ADVISING ADVERSE PARTY. INSURED'S FAILURE TO COOPERATE IN THE DEFENSE. REFUSAL TO DENY NEGLIGENCE. COLLUSION AND FRAUD. RIGHT OF INJURED PARTY TO SUE INSURANCE COMPANY

By Mark A. Hall, of the Los Angeles Bar

"New in California jurisprudence" is the phrase with which the District Court of Appeal itself appraises several questions that are presented in the late case of *Bachman v. Independence Indemnity Company*, 64 C.A.D. 971. This is a case where the injured party sued the insurance company that carried the public liability insurance on the offending car.

Plaintiff's mother was the owner of the car, and was the insured named in the policy. At her request, one Bayliss, her son-in-law, drove the car; "under the terms of the policy, Bayliss became the insured," so hereinafter, when "the insured" is mentioned, it refers to Bayliss. At the time of the accident, the mother and her son (the plaintiff), were both riding in the car that was being driven by Bayliss. By reason of Bayliss' negligence, the car ran off the road, the mother was killed, and the plaintiff injured.

Notice of Accident to Insurance Company

It was not until some weeks after the accident that it was discovered that the mother carried liability insurance; up to that time, Bayliss had not given the company any notice of the accident. Within two or three days after the discovery of the policy, however, plaintiff's attorney brought suit against Bayliss, served him with summons and complaint, and at the same time, sent other copies of the summons and complaint to the California office of the insurance company, and also to its home office. And although the company contended that it had not been given "immediate written notice" as required by the policy, the Court held (page 973) that the notice given by the forwarding of the summons and complaint was sufficient. In this connection, see also *Royal Ind. Co. v. Morris*, 37 Fed. (2d) 90.

For reasons hereinafter stated, the insurance company elected to deny liability on the claim, and refused to defend Bayliss. Later, the plaintiff filed an amended complaint, which was not sent to the company. The Court held (page 974) that after the company had refused to defend the case, it would have been a useless thing for plaintiff to furnish it a copy of the amended complaint.

Misconduct—Attorney Advising Adverse Party

Plaintiff's attorney conferred several times with Bayliss, and instructed him not to sign any statements prepared by representatives of the insurance company, but merely to tell the truth about the happening of the accident. Bayliss did refuse to sign statements presented by the insurance adjusters; and the insurance company claimed, in effect, that their client had been tampered with by plaintiff's attorney. The Court recognizes (page 978) "the impropriety of the attorneys for the plaintiff giving any advice or instructions to the defendant"; but exonerates the attorney on the facts in this particular case.

Insured's Failure to Co-operate in the Defense

Bayliss consistently refused to sign statements prepared by the adjusters, although he did tell them, frankly, the circumstances attending the accident. He took the position that he had been negligent, that his negligence had been the cause of the plaintiff's injury, and that he would like to see the plaintiff recover if he could "do it squarely." The company contended that this attitude on the part of the insured constituted a failure to co-operate in the defense, and that therefore it was relieved of liability under the policy. But the Court held otherwise as there was no provision in the policy re-

quiring the insured to "co-operate in the defense."

Insured's Refusal to Sign Answer Denying Negligence

The Company's attorneys, before finally repudiating liability, prepared an answer for Bayliss to verify, in which a complete denial was made of any negligence on his part. He refused to sign it, as he desired to admit his negligence; but he did offer to sign an answer setting forth the true facts. The Company contended that his refusal to sign the answer prepared was another evidence of his refusal to co-operate; but the Court held (page 979) that he was not required to permit a sham defense to be set up in his name, or to verify an answer which he did not believe to be true.

Collusion and Fraud Between Insured and Injured Party

The insurance company contended, on the whole case, that the evidence showed collusion and fraud between the insured and the plaintiff, as manifested by the conferences between the insured and plaintiff's attorney, the refusal of the insured to verify an answer denying negligence, his failure to co-operate in the defense, and other particulars set forth in the evidence. But the Court held that inasmuch as the trial court had found against the company on this issue, and as there was evidence to support the finding, the finding could not be disturbed on appeal.

Right of Injured Party to Sue Insurance Company

The question which, after all, is perhaps of most interest to attorneys, whether they are prosecuting or defending personal injury actions, is considered last in the opinion, namely, Under what circumstances may an injured party sue an insurance company carrying liability insurance on the offending car? And briefly stated, the answer to that question is, that he may do so *after he first secures a judgment against the insured;* "then an action may be brought against the company, on the policy and subject to its terms and limitations, by such injured person, his heirs or personal representatives, as the case may be, to recover on said judgment." See Stats. 1919, p. 776.

In other words, the injured party should first bring an action against the person causing the injury; in that action, the questions of negligence and contributory negligence are duly litigated; and in this connection, it should be observed that it is highly improper for the plaintiff to bring to the attention of the jury the fact that the defendant is insured.

If the plaintiff recovers judgment against the defendant in the first action, and if that defendant is covered by liability insurance, then the plaintiff may bring a second suit, this time against the insurance company, upon the policy and under the statute above cited.

In this second suit the question of defendant's negligence cannot be again litigated, as that is determined in the first action (see opinion in the instant case, page 973); but defenses of fraud, collusion, lack of notice, or other matters that tend to invalidate the policy or relieve the company from liability, may be raised.

Collusion to Mulct Insurance Company

In *Briggs v. Cameron,* 64 C.A.D. 232, the plaintiff was the defendant's sister. Defendant sent his chauffeur to take plaintiff in his car to buy Christmas turkey; the accident happened on the trip, and plaintiff was injured. The sister sued the brother, and at the trial the brother "indicated an entire willingness to testify to every circumstance favorable to the plaintiff," including the fact that the "car was insured against accidents"; and the chauffeur (defendant's employee) generously gave testimony which, if believed, would have convicted both himself and his employer of negligence.

They apparently overreached themselves, however, in their effort to help the plaintiff; the trial court seemed to suspect that all the parties were merely endeavoring to make the insurance company pay, and gave judgment for the defendant. On appeal, the Appellate Court affirmed the judgment, saying: "The court might have been warranted in assuming the parties to the litigation were in collusion to establish a liability on the part of the defendant, which they expected the surety company to pay."

Evolution of the Legal Position of Women

AN HISTORICAL REVIEW OF THE TRADITIONAL SUBJECTION OF WOMAN, HER EMERGENCE, AFTER CENTURIES, AND THE ACHIEVEMENTS OF HER SEX IN MODERN CIVILIZATION AND LEGISLATION. CHRONICLE OF EVENTS THAT BROUGHT THIS GREAT CHANGE

By Delvy Thomas Walton, of the Los Angeles Bar

THE BULLETIN presents the first installment of an article that, while beyond the limitations of this publication as to space in any one issue, is believed to be of such merit as to justify printing in consecutive installments.

A chronicle of the history and events connected with the legal position of women beginning with the dawn of recorded history as found in early customs and traditions, passing through the first written codes of law, the common law with its disabilities of married women and its equitable innovations for her benefit, on down to modern legislative enactments constituting the present achievement in women's legal standing, forms an interesting picture in the development of our present civilization.

For 6000 years common consent has found other occupations for the capacities of women than a share in the more important affairs of the nations. The traditional and habitual subjection of women to men has been a universal custom and hence any departure from it has always appeared quite unnatural. Yet, out of the mouldering records of bygone centuries any competent student can gather ample evidence of the capability of women to fill any place in the field to which she may be summoned.

In the feudal ages, war and politics were not thought unnatural to women, because not unusual; it seemed natural that women of the privileged classes should be of manly character, inferior in nothing but bodily strength to their husbands and fathers. The independence of women seemed rather less unnatural to the Greeks than to other ancients, on account of the fabulous Amazons (whom they believed to be historical), and the partial example afforded by the Spartan women; who, though no less subordinate by law than in other Greek states, were more free in fact, and being trained to bodily exercise in the same manner with men, gave ample proof that they were not unnaturally disqualified for them.

But law as well as nature herself has always recognized a wide difference in the respective spheres and destinies of man and woman, with the consequent subordination of woman. She has been held the weaker vessel and the study of man has been to keep her weak. Not necessarily physically weak by any means—witness the lordly husband of the tropics lolling at ease while his various wives till the fields—but weak in all that makes for personal initiative and independence. The intellect and power of man have been given to the conquest of the earth—the natural forces—first for his own use, as in the individualistic age, then for his tribe or clan, and, in a more advanced civilization for his country. Woman, on the contrary, has centered her activities on developing the agencies which conserve life.

Whether married or single, throughout her life, a woman was supposed to remain absolutely under the power of father, husband, or guardian, and to do nothing without their consent. In ancient times, indeed, this authority was so great that the father and husband could, after calling a family council, put the woman to death without public trial. (Aulus Gellius x23; "History of Women's Rights Under Roman Law," by Eugene A. Hecker, 1910.) For countless generations women were held in subjection, foisted as an ornament of the home and a passive element of humanity—producers of the line of warriors and race builders. They were accustomed to be captured, sold as chattels, and compelled to be wives or slaves, or both, of their conquerors.

It has only been within the last century—a period of four generations—that woman has been slowly but surely emerging from the darkness and oppression of the feudal and prefeudal ages in which man has confined her. This subjection has not been through sheer force of intellectual superiority, but by the power of masculine physical

development, and the natural advantages which man possessed over woman. The horizon began to loom in the distance and the dawn came when people began to suggest that women were quite as reasonable by nature as men, and that improper education was responsible for any difference between them in this respect.

Women in Ancient Civilizations

It would be quite as impossible to draw a diagram showing the evolution from primitive stages to the present high civilization of women's legal position as it would to stake out with cords and pegs the shadow of an oak tree. We may search from the picture of the savage woman, insulted and injured, degraded by polygamy, overworked, the slave of foul passions and defective moralities, on up to the golden age of feminism where women rule and are in consequence superlatively happy, but throughout, the legal status of women cannot be definitely traced or successfully correlated with the stage of general cultural advance in any given society. We can find a great many examples of very backward peoples where women occupy a fortunate legal position as compared with that of women in the higher civilizations. The recognized customs and codified law of a community do not always tally with the practical social habits as far as women's position is concerned.

Our own history springs largely from Rome, influenced by the still more ancient Greeks, and the Jewish background of Christianity. But behind all these we see the shadows of an earlier eastern world, of Egypt, and of Babylon, and of Asia Minor.

The Babylonian Code

Among the oldest and most noteworthy records of the written law is the Babylonian Code of Hammurabi (about 2250 B. C.). The Code covers a wide area of criminal and civil law and contains several sections relating to and giving evidence of woman's legal status. It discloses that the social life of Babylon was on a distinctly patriarchal basis. A man might pledge his wife, his son, or his daughter to pay off his debts by working for any period not exceeding three years. (Hammurabi, secs. 141, 142, 143). In matters of religion Hebrew women held an inferior position, being excluded or excused from many ceremonial observances. "Women, slaves, and minors may not be included" to make up the quorum. The Hebrew wife is said to have conducted the main part of the family business, at home and abroad; she not only spun and wove, but also traded and bought land and planted vineyards—toiled early and late with her maidens while her husband "is known in the gates, when he sitteth among the elders of the land." (Proverbs 31:23). Here we find the five daughters (including that of Noah) whose names deserve to be remembered as the first women to publicly plead the cause of their sex "before the princes and all the congregation" winning for Hebrew women the right of inheriting land from their father, if there were no surviving sons. (Numbers XXVII, I-II)

The scheme of life in ancient Egypt was less crudely patriarchal and more humane than in other oriental countries. Male supremacy was tempered by custom, though not eliminated, and women enjoyed a large measure of social freedom and legal independence. There was no need to pass a Married Women's Property Act, since it appears from contracts, wills, marriage settlement agreements, and other documents which have come down to us that women had from the beginning, and never lost, *equal* rights with men in the matter of inheriting, holding, managing and bequeathing both real and personal property.

In India, according to the Code of Manu, women were at every period of their life under the absolute control of their fathers, husbands or sons. A wife was in duty bound to worship her husband as a god, even if he was a man of bad conduct. While in Persia, the wives lived in strict seclusion within the harem.

Women in Ancient Greece

Ancient Greece was at one time more civilized and more intellectual than any modern community, and as barbarous or rather as "primitive" as any country heretofore mentioned. If we consider Athens and Sparta in their greatest periods we find that the individual was sacrificed to the State, and identified with the needs of the herd as completely as in any savage tribe. Women were without minds and without individualism. Plato classes together "children, women and servants" precisely as the tenth commandment of the Hebrew and Christian religions classes together "one neighbor's wife, his servants, his ox and the rest of his property."

(Continued in June Bulletin)

CAN THIS BE TRUE?

"Yet it seems that in the larger cities of this country there are hundreds and more men licensed to practice law, who are simply holding a job with trust organizations. They receive their salary for services performed the same way that the ditch digger does from the city whose sewers he is excavating.

"So serious has this condition become, and the activities of banks and trust companies have become so acute, that the supreme courts of various states have undertaken to put an end to this species of unlawful practice.

"In a case pending recently in Connecticut, counsel for the plaintiff gave the following figures and estimates of earnings:

"In the city of Los Angeles, it was stated, there are 180 lawyers whose average earning capacity as paid by title and trust companies as well as by banks, does not exceed $30.00 weekly.

(From an article by Hon. C. J. Roberts, First Chief Justice of the New Mexico Supreme Court, printed in the May issue of *The Lawyer and Banker.*)

(Continued from Page 267)

SUPERIOR COURT

(Probate and Special Matters)

For the administration of any estate.
Never less than the statutory fee.

For the appointment of an administrator, where the sole purpose of the proceeding is to make him a defendant in a quiet title suit, and there is no further estate than a mere cloud upon the title. Not less than 75.00

For filing the petition and obtaining letters of guardianship for a minor when the matter is uncontested. Not less than 75.00

For each annual account. Not less than 25.00

For any default divorce case. (This does not contemplate or include the preparation of any property settlement.) Not less than 100.00

MUNICIPAL COURT

(CIVIL)

For filing any complaint or answer or instituting any proceeding in a Municipal Court. Not less than 25.00

For appearing in the Municipal Court on any demurrer, motion, citation or contested matter. Not less than 25.00

For the trial of any matter requiring more than a one-half day session and not more than a one day session Not less than 50.00

For each succeeding day of trial. Not less than 50.00

For the prosecution of any action in the Municipal Court, which is solely and purely a collection matter, involves no other issue and seeks no other relief.
Not less than 20% on the first $500.00, 15% on the next $500.00, and 10% on the excess.

For the collection of any note, for the foreclosure of any chattel mortgage or for the collection of any sum under a contract which provides an attorney's fee.
Not less than the fee hereinbefore provided in collection matters, and in no instance less than the full fee allowed by court rules.

(CRIMINAL)

For arraignment and plea in a misdemeanor case. Not less than 25.00

For the first day of trial of a misdemeanor case. Not less than 50.00

For each succeeding day. Not less than 50.00

For arraignment on a felony. Not less than 25.00

For the first day, or part thereof, engaged in a Preliminary Hearing. Not less than 50.00

For each succeeding day. Not less than 50.00

For attending a Coroner's Inquest. Not less than 50.00

SIGNED ARTICLES

THE BULLETIN is an open forum for the full expression of the members of the bar on matters of importance. As the widest range of opinion is necessary in order that different aspects of such matters may be presented, the Committee having charge of the publication of the Bulletin assumes no responsibility for the opinions in signed articles, except to the extent of expressing the views, by the fact of publication that the subject treated is one which merits attention.